

Message Text

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ACTION L-03

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E. O. 11652: N/A
TAGS: ETRN MO
SUBJ: TAXATION OF INSTRUMENTS OF FOREIGN COMMERCE

REF: STATE 191803

1. EMBASSY CONTACTED TAX DIVISION IN GOM/MINFIN TO SEEK
CLARIFICATION ON WHETHER MOROCCAN TAX CODE HAS ANY
PROVISIONS GOVERNING TAXATION OF INSTRUMENTS OF FOREIGN
COMMERCE.

2. BASIC ANSWER IS THAT GOM DOES NOT REPEAT NOT, TAX
INSTRUMENTS OF FOREIGN COMMERCE PER SE. IN EXPLAINING
SITUATION, TAX DIVISION OFFICIAL (WHO HIGHLY
KNOWLEDGEABLE AND ALSO CONVERSANT WITH TYPE OF ISSUE CITED
REFTEL) SAID THAT BASIS OF ALL MOROCCAN TAXATION IS TEST OF
PERMANENT ESTABLISHMENT (IN FRENCH "SIEGE SOCIAL"). IF TEST IS
POSITIVE, PHYSICAL OR LEGAL PERSON IN QUESTION IS SUBJECT
TO MOROCCAN TAXATION - WITH SPECIFICS OF TAX LIABILITY
DEPENDING ON PRECISE STATUS AND/OR CHARACTER OF SUCH
PHYSICAL OR LEGAL PERSON. MOROCCAN TAX LAW, OFFICIAL
ADDED, IS BASED EXPLICITLY ON CONCEPT OF NATIONAL
SOVEREIGNTY IN MATTERS RELATING TO TAXATION, ONCE
ISSUE OF PERMANENT ESTABLISHMENT IS DECIDED IN
MOROCCO'S FAVOR. MOROCCAN TAX CODE THUS CONCORDS
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WITH TRADITIONAL RULE CITED REFTEL THAT TAXES ON
INSTRUMENTS OF FOREIGN COMMERCE ARE EXCLUSIVE DOMAIN
OF NATION UNDER WHOSE FLAG THEY OPERATE.

3. INDIVIDUAL OR ENTITES WITH A PERMANENT
ESTABLISHMENT OUTSIDE OF MOROCCO ARE SUBJECT ONLY
TO A TAX ON INCOME GENERATED WITHIN MOROCCO. STATED

OTHERWISE, MOROCCO DOES NOT APPLY A TAX ON INDIVIDUAL ASSETS USED IN CONDUCTING BUSINESS - INCLUDING INSTRUMENTS OF FOREIGN COMMERCE - OTHER THAN FIXED PROPERTY FOR WHICH A MUNICIPAL AND/OR GOM PROPERTY TAX APPLIES DEPENDING ON LOCATION OF PROPERTY. HOWEVER, INSTRUMENTS OF FOREIGN COMMERCE TEMPORARILY PRESENT IN MOROCCO ARE NOT CONSIDERED PROPERTY AS SUCH AND ARE THEREFORE NOT SUBJECT TO EITHER MUNICIPAL OR GOM PROPERTY TAXES.

4. TO ILLUSTRATE ABOVE, OFFICIAL OBSERVED THAT IF AN INSTRUMENT OF FOREIGN COMMERCE WERE TO REMAIN IN MOROCCO FOR A LONGER THAN "NORMAL" PERIOD, IT WOULD BE LEGITIMATE FOR THE GOM TO LEVY A TAX ON THAT PORTION OF PROFIT OR INCOME WHICH WOULD ACCRUE FROM THE USE OF SUCH INSTRUMENT WHILE PRESENT IN MOROCCO.

5. RE FINAL QUESTION PARA 3 REFTTEL, OFFICIAL STATED THAT THERE ARE NO PROVISIONS IN MOROCCAN TAX CODE FOR APPLYING RETALIATORY TAXES. SHOULD MOROCCAN FLAG CARRIERS BE TAXED BY FOREIGN STATES, GOM RESORTS TO NEGOTIATION TO SECURE RELIEF. HOWEVER, CASES SUCH AS CITED REFTTEL HAVE NEVER ARISEN.

ANDERSON

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